

# **JOURNAL OF THE SENATE**

## **EIGHTY-SEVENTH SESSION**

---

TWELFTH DAY

---

STATE OF SOUTH DAKOTA  
Senate Chamber, Pierre  
Tuesday, January 31, 2012

The Senate convened at 2:00 p.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Dodie Noordermeer, followed by the Pledge of Allegiance led by Senate page Joseph Knofczynski.

Roll Call: All members present except Sen. Tideman who was excused.

### **APPROVAL OF THE JOURNAL**

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the eleventh day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,  
Bob Gray, Chair

Which motion prevailed.

## REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on Education respectfully reports that it has had under consideration SB 106 and returns the same with the recommendation that said bill be amended as follows:

106ca

On page 1, line 6, of the printed bill, after "any" insert "current or prior".

And that as so amended said bill do pass.

Also MR. PRESIDENT:

The Committee on Education respectfully reports that it has had under consideration SB 165 and returns the same with the recommendation that said bill be referred to the Committee on Appropriations.

Respectfully submitted,  
Bob Gray, Vice Chair

Also MR. PRESIDENT:

The Committee on Commerce and Energy respectfully reports that it has had under consideration SB 11 and returns the same with the recommendation that said bill be amended as follows:

11ra

On page 1, line 7, of the Senate Commerce and Energy Committee engrossed bill, delete "grants and".

On page 2, line 14, delete "grants and".

On page 2, line 20, delete "or recoup a grant".

On page 3, line 1, delete "and grants".

On page 3, line 4, after "initiative loan" delete "or grant".

On page 3, line 4, after "the loan" delete "or grant".

1 On page 3, line 8, delete "or grant".

2 11jta

3 On page 1, line 2, of the Senate Commerce and Energy Committee engrossed bill, delete  
4 "and grant".

5 And that as so amended said bill do pass.

6 Also MR. PRESIDENT:

7 The Committee on Commerce and Energy respectfully reports that it has had under  
8 consideration SB 103 and returns the same with the recommendation that said bill be amended  
9 as follows:

10 103fa

11 On page 2, line 1, of the printed bill, overstrike "a".

12 On page 2, line 3, delete "week for two consecutive weeks".

13 On page 2, line 16, delete "a week for two consecutive weeks".

14 And that as so amended said bill do pass.

15 Also MR. PRESIDENT:

16 The Committee on Commerce and Energy respectfully reports that it has had under  
17 consideration SB 115 and returns the same with the recommendation that said bill be amended  
18 as follows:

19 115sa

20 On page 4, line 4, of the printed bill, after "refund" insert "or credit".

21 On page 9, line 19, after "violates" delete "an" and insert "any".

22 And that as so amended said bill do pass and be placed on the consent calendar.

1 Also MR. PRESIDENT:

2 The Committee on Commerce and Energy respectfully reports that it has had under  
3 consideration SB 109 which was deferred to the 36<sup>th</sup> Legislative Day.

4 Respectfully submitted,  
5 Eldon Nygaard, Vice-Chair

6 Also MR. PRESIDENT:

7 The Committee on Agriculture and Natural Resources respectfully reports that it has had  
8 under consideration HB 1003 and returns the same with the recommendation that said bill do  
9 pass.

10 Also MR. PRESIDENT:

11 The Committee on Agriculture and Natural Resources respectfully reports that it has had  
12 under consideration HB 1011, 1012, and 1013 and returns the same with the recommendation  
13 that said bills do pass and be placed on the consent calendar.

14 Also MR. PRESIDENT:

15 The Committee on Agriculture and Natural Resources respectfully reports that it has had  
16 under consideration SB 88 and 129 which were deferred to the 41st Legislative Day.

17 Respectfully submitted,  
18 Shantel Krebs, Chair

19 Also MR. PRESIDENT:

20 The Committee on Judiciary respectfully reports that it has had under consideration SB 149  
21 and returns the same with the recommendation that said bill do pass.

22 Also MR. PRESIDENT:

23 The Committee on Judiciary respectfully reports that it has had under consideration SB 68  
24 and returns the same with the recommendation that said bill be amended as follows:

25 68ra

26 On page 2, line 7, of the printed bill, after "to" insert "subdivisions (1) or (2) of".

1 On page 2, line 9, after "." insert "Otherwise a charge brought pursuant to this section may  
2 be commenced at any time prior to the time the victim becomes of age twenty-five or within  
3 seven years of the commission of the crime, whichever is longer."

4 And that as so amended said bill do pass.

5 Also MR. PRESIDENT:

6 The Committee on Judiciary respectfully reports that it has had under consideration SB 76  
7 and returns the same with the recommendation that said bill be amended as follows:

8 76rc

9 On page 1 of the printed bill, delete lines 5 to 13, inclusive, and insert:

10 "16-1-4.1.A justice of the Supreme Court is automatically retired on the first Tuesday after  
11 the first Monday of January next after the general election at which members of the Legislature  
12 are elected immediately following the attainment of age seventy of such justice. Such justice  
13 shall conclude all matters pending before him or her unless the Supreme Court makes other  
14 provisions for the disposition of such matters. Moreover, the Chief Justice of the Supreme Court  
15 may, from year to year, permit such justice to continue to serve, after attaining retirement age,  
16 for all or any portion of the unexpired term."

17 On page 2, delete lines 1 to 9, inclusive, and insert:

18 "16-6-31.A judge of a circuit court is automatically retired on the first Tuesday after the  
19 first Monday of January next after the general election at which members of the Legislature are  
20 elected immediately following the attainment of age seventy of such judge. Such judge shall  
21 conclude all matters pending before him or her unless the Supreme Court makes other  
22 provisions for the disposition of such matters. Moreover, the Chief Justice of the Supreme Court  
23 may, from year to year, permit such judge to continue to serve, after attaining retirement age,  
24 for all or any portion of the unexpired term."

25 And that as so amended said bill do pass.

26 Also MR. PRESIDENT:

27 The Committee on Judiciary respectfully reports that it has had under consideration SB 86  
28 and returns the same with the recommendation that said bill be amended as follows:

29 86ra

30 On page 1, line 5, of the printed bill, delete everything after "any" .

31 On page 1, line 6, delete "consumption of alcohol" and insert "violation of § 35-9-2".

1 On page 1, line 10, after "of" insert "emergency".

2 On page 1, line 11, after "with" insert "the emergency".

3 On page 2, line 2, delete "offense".

4 On page 2, line 3, delete "arising out of underage consumption of alcohol" and insert  
5 "violation of § 35-9-2".

6 On page 2, line 6, after "with" insert "the emergency".

7 And that as so amended said bill do pass.

8 Respectfully submitted,  
9 Craig Tieszen, Chair

10 Also MR. PRESIDENT:

11 The Committee on Legislative Procedure respectfully reports that the Office of Engrossing  
12 and Enrolling has carefully compared SB 18 and finds the same correctly enrolled.

13 Respectfully submitted,  
14 Bob Gray, Chair

15 **MESSAGES FROM THE HOUSE**

16 MR. PRESIDENT:

17 I have the honor to return herewith SB 18 which has passed the House without change.

18 Also MR. PRESIDENT:

19 I have the honor to transmit herewith HB 1005, 1018, 1027, 1040, 1042, 1043, 1044, 1057,  
20 1077, 1078, and 1094 which have passed the House and your favorable consideration is  
21 respectfully requested.

22 Respectfully,  
23 Karen Gerdes, Chief Clerk

1 **MOTIONS AND RESOLUTIONS**

2 SCR 1: A CONCURRENT RESOLUTION, Honoring the University of South Dakota on  
3 its one hundred fiftieth anniversary.

4 Was read the second time.

5 Sen. Nygaard moved that SCR 1 as found on page 209 of the Senate Journal be adopted.

6 The question being on Sen. Nygaard's motion that SCR 1 be adopted.

7 And the roll being called:

8 Yeas 34, Nays 0, Excused 1, Absent 0

9 Yeas:

10 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslic; Gray; Hansen (Tom);  
11 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
12 Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
13 Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

14 Excused:

15 Tidemann

16 So the motion having received an affirmative vote of a majority of the members-elect, the  
17 President declared the motion carried and SCR 1 was adopted.

18 **CONSIDERATION OF REPORTS OF COMMITTEES**

19 Sen. Olson moved that the reports of the Standing Committees on

20 Transportation on SB 22 as found on page 206 of the Senate Journal; also

21 Taxation on SB 91 as found on page 208 of the Senate Journal; also

22 Local Government on SB 102 as found on page 207 of the Senate Journal; also

23 Local Government on SB 101 as found on page 207 of the Senate Journal be adopted.

24 Which motion prevailed.

1                   **FIRST READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

2           HB 1005: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the  
3   excuse from attendance of children receiving alternative instruction.

4           Was read the first time and referred to the Committee on Education.

5           HB 1018: FOR AN ACT ENTITLED, An Act to repeal certain obsolete or unnecessary  
6   provisions pertaining to the Department of Game, Fish and Parks.

7           Was read the first time and referred to the Committee on Agriculture and Natural  
8   Resources.

9           HB 1027: FOR AN ACT ENTITLED, An Act to repeal certain outdated or unnecessary  
10   statutes related to the Division of Behavioral Health within the Department of Social Services.

11          Was read the first time and referred to the Committee on Health and Human Services.

12          HB 1040: FOR AN ACT ENTITLED, An Act to make an appropriation for the payment  
13   of extraordinary litigation expenses and to declare an emergency.

14          Was read the first time and referred to the Committee on Appropriations.

15          HB 1042: FOR AN ACT ENTITLED, An Act to repeal certain obsolete statutes relating  
16   to the State Cement Plant Commission.

17          Was read the first time and referred to the Committee on Appropriations.

18          HB 1043: FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding the  
19   full-time equivalent staffing report.

20          Was read the first time and referred to the Committee on Appropriations.

21          HB 1044: FOR AN ACT ENTITLED, An Act to repeal certain statutes relating to the  
22   Bureau of Intergovernmental Relations.

23          Was read the first time and referred to the Committee on State Affairs.

24          HB 1057: FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the  
25   manner in which county wheel taxes are imposed.



1 Was read the first time and referred to the Committee on Local Government.

2 HB 1077: FOR AN ACT ENTITLED, An Act to authorize municipalities to establish  
3 incidental accounts.

4 Was read the first time and referred to the Committee on Local Government.

5 HB 1078: FOR AN ACT ENTITLED, An Act to allow certain structures or facilities  
6 previously used as an elevator to be classified as agricultural property.

7 Was read the first time and referred to the Committee on Taxation.

8 HB 1094: FOR AN ACT ENTITLED, An Act to require the filing of certain documents  
9 relating to the vacation, location, or changing of highways with the register of deeds.

10 Was read the first time and referred to the Committee on Local Government.

11 **SECOND READING OF CONSENT CALENDAR ITEMS**

12 SB 83: FOR AN ACT ENTITLED, An Act to revise certain provisions relating to water  
13 development districts.

14 Was read the second time.

15 The question being "Shall SB 83 pass as amended?"

16 And the roll being called:

17 Yeas 34, Nays 0, Excused 1, Absent 0

18 Yeas:

19 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
20 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
21 Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
22 Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

23 Excused:

24 Tidemann

25 So the bill having received an affirmative vote of a majority of the members-elect, the  
26 President declared the bill passed and the title was agreed to.

1 SB 140: FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding glazing  
2 material on motorcycle windshields and wind deflectors.

3 Was read the second time.

4 The question being "Shall SB 140 pass?"

5 And the roll being called:

6 Yeas 34, Nays 0, Excused 1, Absent 0

7 Yeas:

8 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
9 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
10 Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
11 Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

12 Excused:

13 Tidemann

14 So the bill having received an affirmative vote of a majority of the members-elect, the  
15 President declared the bill passed and the title was agreed to.

16 SB 104: FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the  
17 investment of public funds.

18 Was read the second time.

19 The question being "Shall SB 104 pass?"

20 And the roll being called:

21 Yeas 34, Nays 0, Excused 1, Absent 0

22 Yeas:

23 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
24 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
25 Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
26 Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

27 Excused:

28 Tidemann

29 So the bill having received an affirmative vote of a majority of the members-elect, the  
30 President declared the bill passed and the title was agreed to.

1 SB 73: FOR AN ACT ENTITLED, An Act to repeal the provisions regarding the  
2 assessment of real property located in a floodplain.

3 Was read the second time.

4 The question being "Shall SB 73 pass?"

5 And the roll being called:

6 Yeas 34, Nays 0, Excused 1, Absent 0

7 Yeas:

8 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
9 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
10 Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
11 Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

12 Excused:

13 Tidemann

14 So the bill having received an affirmative vote of a majority of the members-elect, the  
15 President declared the bill passed and the title was agreed to.

## 16 SECOND READING OF SENATE BILLS AND JOINT RESOLUTIONS

17 SB 35: FOR AN ACT ENTITLED, An Act to update certain citations to federal  
18 regulations and increase certain civil penalties regarding pipeline safety inspection.

19 Was read the second time.

20 The question being "Shall SB 35 pass?"

21 And the roll being called:

22 Yeas 34, Nays 0, Excused 1, Absent 0

23 Yeas:

24 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
25 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
26 Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
27 Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

28 Excused:

29 Tidemann

1       So the bill having received an affirmative vote of a two-thirds majority of the members-  
2 elect, the President declared the bill passed and the title was agreed to.

3       SB 65: FOR AN ACT ENTITLED, An Act to revise the list of products offered to  
4 consumers by motor vehicle dealers and sales finance companies.

5       Was read the second time.

6       The question being "Shall SB 65 pass as amended?"

7       And the roll being called:

8       Yeas 34, Nays 0, Excused 1, Absent 0

9       Yeas:

10   Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
11   Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
12   Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
13   Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

14   Excused:

15   Tidemann

16       So the bill having received an affirmative vote of a majority of the members-elect, the  
17 President declared the bill passed and the title was agreed to.

18       SB 38: FOR AN ACT ENTITLED, An Act to provide for the transfer of control of an  
19 office building in Rapid City, to make an appropriation for the construction and renovation of  
20 the office building, and to declare an emergency.

21       Was read the second time.

22       The question being "Shall SB 38 pass as amended?"

23       And the roll being called:

24       Yeas 31, Nays 2, Excused 2, Absent 0

25       Yeas:

26   Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
27   Haverly; Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;  
28   Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rave; Rhoden;  
29   Schlekeway; Sutton; Tieszen; Vehle

30       Nays:

31   Hundstad; Maher

1       Excused:  
2       Rampelberg; Tidemann

3       So the bill having received an affirmative vote of a two-thirds majority of the members-  
4       elect, the President declared the bill passed and the title was agreed to.

5       SB 78: FOR AN ACT ENTITLED, An Act to allow an arrest to be expunged when the  
6       criminal case is dismissed.

7       Was read the second time.

8       The question being "Shall SB 78 pass as amended?"

9       And the roll being called:

10       Yeas 34, Nays 0, Excused 1, Absent 0

11       Yeas:  
12       Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
13       Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
14       Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
15       Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

16       Excused:  
17       Tidemann

18       So the bill having received an affirmative vote of a majority of the members-elect, the  
19       President declared the bill passed and the title was agreed to.

20       SB 93: FOR AN ACT ENTITLED, An Act to provide for the withdrawal of referred  
21       measures in certain circumstances.

22       Was read the second time.

23       The question being "Shall SB 93 pass?"

24       And the roll being called:

25       Yeas 34, Nays 0, Excused 1, Absent 0

26       Yeas:  
27       Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
28       Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
29       Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
30       Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

1       Excused:  
2       Tidemann

3       So the bill having received an affirmative vote of a majority of the members-elect, the  
4       President declared the bill passed and the title was agreed to.

5       SB 123: FOR AN ACT ENTITLED, An Act to revise how the taxes are applied to rural  
6       electric companies.

7       Was read the second time.

8       The question being "Shall SB 123 pass?"

9       And the roll being called:

10      Yeas 25, Nays 9, Excused 1, Absent 0

11      Yeas:  
12      Begalka; Bradford; Buhl; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly; Hunhoff (Jean);  
13      Johnston; Juhnke; Kraus; Krebs; Lederman; Maher; Nelson (Tom); Nygaard; Peters; Putnam;  
14      Rampelberg; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

15      Nays:  
16      Adelstein; Brown; Cutler; Heineman; Holien; Hundstad; Novstrup (Al); Olson (Russell); Rave

17      Excused:  
18      Tidemann

19      So the bill having received an affirmative vote of a two-thirds majority of the members-  
20      elect, the President declared the bill passed and the title was agreed to.

## 21               **SECOND READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

22      HB 1014: FOR AN ACT ENTITLED, An Act to prohibit false statements on applications  
23      for certain loans, grants, or other financial assistance and to provide a penalty therefor.

24      Was read the second time.

25      The question being "Shall HB 1014 pass?"

26      And the roll being called:

27      Yeas 34, Nays 0, Excused 1, Absent 0

1 Yeas:

2 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
3 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;  
4 Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam;  
5 Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tieszen; Vehle

6 Excused:

7 Tidemann

8 So the bill having received an affirmative vote of a majority of the members-elect, the  
9 President declared the bill passed and the title was agreed to.

10 **SIGNING OF BILLS**

11 The President publicly read the title to

12 SB 18: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding  
13 references to the Internal Revenue Code.

14 HB 1016: FOR AN ACT ENTITLED, An Act to repeal certain rules relating to use of the  
15 centennial logo.

16 HB 1024: FOR AN ACT ENTITLED, An Act to repeal the authorization to sell certain  
17 surplus real estate under the control of the Department of Corrections in Aurora County and  
18 Minnehaha County.

19 HB 1048: FOR AN ACT ENTITLED, An Act to expand the Board of Military Affairs.

20 And signed the same in the presence of the Senate.

21 Sen. Holien moved that the Senate do now adjourn, which motion prevailed and at  
22 3:30 p.m. the Senate adjourned.

23

Fee Jacobsen, Secretary